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In re Application of	:	
LINDQVIST et al.	:	
U.S. Application No. 10/009,302	:	DECISION ON PETITION
PCT No.: PCT/SE00/01049	:	UNDER 37 CFR 1.47(b)
Int. Filing Date: 24 May 2000	:	
Priority Date: 15 June 1999	:	
Attorney Docket No.: 627-1446	:	
For: METHOD AND DEVICE FOR	:	
BATTERIES	:	

This is a decision on applicant's "Petition under 37 CFR 1.47(b)" filed 13 August 2002 to accept the application without the signature of inventors, Frank Lindqvist and Henrik Lindqvist.

BACKGROUND

On 24 May 2000, applicant filed international application no. PCT/SE00/01049 which claimed a priority date of 15 June 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 21 December 2000. A proper Demand was filed with the International Preliminary Examination Authority prior to the 19th month from the earliest claimed priority date. Accordingly, the thirty-month time period for submitting the requisite basic national fee in the United States of America was extended to expire 30 months from the priority date, i.e., 15 December 2001.

On 07 December 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1) and a preliminary amendment.

On 14 February 2002, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 must be filed. The notification set a two-month time limit in which to respond.

On 13 August 2002, applicant filed "Petition under 37 CFR 1.47(b)" and a petition and requisite fee for a four-month extension of time.

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were never signed and returned by the inventors Frank Lindqvist and Henrik Lindqvist. On July 12, 2002 a second copy of the documents including the oath was sent by registered mail to both inventors Frank Lindqvist and Henrik Lindqvist to be signed by them. These documents have not been returned. Our patent agent, Peter Kylin, has also been in contact by phone with the inventors to try to persuade them of the necessity to sign the documents, however, without success.

The declaration of Ake Holger Johansson fails to state what application papers were sent to the missing inventors. Was a complete application (specification, claims, and drawings) mailed to Frank Lindqvist and Henrik Lindqvist? Additionally, petitioner has provided a copy of a letter to Frank Lindqvist and Henrik Lindqvist, however, these letters have not been translated into English. Furthermore, it does not appear that the Ake Holger Johansson has first hand knowledge of all the facts.

In order to meet the requirements of 37 CFR 1.47(a) and Section 409.03(d) of the MPEP, a statement of facts is needed from a person having first hand knowledge of the facts that a complete copy of the application papers was sent to Frank Lindqvist and Henrik Lindqvist and when such papers were sent and that Frank Lindqvist and Henrik Lindqvist have subsequently refused to execute the application. In addition, copies of documentary evidence such as a certified mail return receipt, cover letter of instruction, telegrams, etc., should be supplied with the declaration.

Regarding item (5), petitioner has not demonstrated that Macbat Aktiebolag has a propriety interest in the invention. The declaration of Lars Ake Holger Johansson states that, "I am the president of Macbat AB...which changed its name from Holgia AB to Macabat AB on October 25, 2001." However, a review of the petition papers reveals that Mr. Johansson's statement and the Certificate of Registration does not establish documentary evidence of a "chain of title" from the original inventor to the assignee, Macbat Aktiebolag. It is unclear whether the assignments executed by Frank Lindqvist and Henrik Lindqvist to Holgia AB have been properly transferred from Holgia AB to Macbat AB and by what legal means. Therefore, further evidence is required to establish that the assignment in fact constitutes an assignment of the instant application to Macbat Aktiebolag. (See 37 CFR 3.73(b)(1)(i)).

For the reasons stated above, it would not be appropriate to accept the application without the signature of Frank Lindqvist and Henrik Lindqvist under 37 CFR 1.47(b) at this time.

CONCLUSION

The petition filed under 37 CFR 1.47(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO MONTHS** from the mailing date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a). Any reconsideration request should include a cover

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DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the requisite petition fee under 37 CFR 1.17(h); (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the nonsigning inventor; (4) an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor; (5) proof of proprietary interest in the application; and, (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. The 37 CFR 1.47(b) applicant has satisfied the requirements of item (1), (3), (4), and (6) above. However, items (2) and (5) have not been satisfied.

Concerning Item (2), Section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.), **Proof of Unavailability or Refusal**, states, in part:

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of its refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which the conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

A review of the present petition reveals that petitioner has not satisfied item (2) above, in that the applicant has not shown that a *bona fide* attempt was made to present the application papers, including the specification, claims, and drawings to Frank Lindqvist and Henrik Lindqvist. The declaration of Lars Ake Holger Johansson states that,

On April 18, 2002, the oath, power of attorney document was sent via registered mail to Frank Lindqvist for the inventors signature by our patent agency Hynell Patenttjanst AB. However, these documents

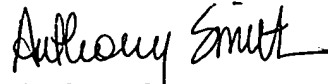
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letter entitled "Renewed Petition Under 37 CFR 1.47(b).

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Legal Affairs Division of the PCT Legal Office.



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